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MI PUEBLO SAN JOSE, INC.

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

MI PUEBLO SAN JOSE, INC.,

Debtor,

CASE NO. 13-53893-ASW

CHAPTER NUMBER: 11

**NOTICE TO HOLDERS OF 503(b)(9) CLAIMS WITH RESPECT TO TREATMENT OF  
503(b)(9) CLAIMS UNDER DEBTOR'S FIRST AMENDED PLAN OF  
REORGANIZATION PURSUANT TO CHAPTER 11 OF THE UNITED STATES  
BANKRUPTCY CODE AND  
"OPT-OUT FORM" FOR THE THIRD PARTY RELEASE**

**THE DEADLINE TO OBJECT TO THE PLAN OR  
OPT-OUT OF THE THIRD PARTY RELEASE IS  
MAY 5, 2014 at 4:00 P.M. (PREVAILING PACIFIC  
TIME).**

**PLEASE TAKE NOTICE THAT** on April 25, 2014, the Bankruptcy Court entered an order (the "Solicitation Procedures Order") approving the *Disclosure Statement for the Debtor's First Amended Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code* [Docket No. 739] (as modified, amended, or supplemented from time to time, the "Disclosure Statement") with respect to the *Debtor's First Amended Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code* [Docket No. 740] (as modified, amended, or supplemented from time to time, the "Plan").<sup>1</sup>

**PLEASE TAKE FURTHER NOTICE THAT** the Plan provides the following treatment for holders of Claims entitled to priority under section 503(b)(9) of the Bankruptcy Code (the "503(b)(9) Claims"): Except to the extent that a holder of an Allowed 503(b)(9) Claim agrees to a less favorable treatment in writing, on or as soon as practicable after the Effective Date, each holder of an Allowed 503(b)(9) Claim (i) that agrees or is deemed to agree to such treatment shall receive (a) an A Note, (b) a B Note, or (c) a combination of both in accordance with the Plan (the "Proposed Plan Treatment") or (ii) if the holder of such Allowed

<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Plan.

503(b)(9) Claim has not agreed to (a) an A Note, (b) a B Note, or (c) a combination of both in accordance with the Plan, on the Effective Date or as soon thereafter as such 503(b)(9) Claim becomes Allowed, cash equal to the allowed amount of such Allowed 503(b)(9) Claim.

**PLEASE TAKE FURTHER NOTICE THAT**, pursuant to section 1129(a)(9) of the Bankruptcy Code, holders of a 503(b)(9) Claim must be paid cash in the allowed amount of their claim on the plan effective date, “[e]xcept to the extent that the holder of [such] claim has agreed to a different treatment of such claim.” *See* 11 U.S.C. § 1129(a)(9). In this chapter 11 case, there are insufficient unencumbered funds to make a full distribution on account of all Allowed 503(b)(9) Claims on the Effective Date of the Plan. Accordingly, the Plan provides holders of Allowed 503(b)(9) with the Proposed Plan Treatment.

**PLEASE TAKE FURTHER NOTICE THAT the Plan provides that holders of 503(b)(9) Claims who do not timely object in writing to the Proposed Plan Treatment will be deemed to have consented to such treatment, thus satisfying section 1129(a)(9) of the Bankruptcy Code as one of the requirements for confirmation of the Plan.**

**PLEASE TAKE FURTHER NOTICE THAT IF YOU OBJECT TO THE PROPOSED PLAN TREATMENT IN SATISFACTION OF YOUR ALLOWED 503(b)(9) CLAIM, YOU MUST FILE AND SERVE A TIMELY WRITTEN OBJECTION IN ACCORDANCE WITH THE PROCEDURES SET FORTH IN THIS OPT-OUT FORM.**

**PLEASE TAKE FURTHER NOTICE THAT** objections to the Proposed Plan Treatment, if any, must (i) be in writing, (ii) state the name and address of the objecting party and the amount and nature of the Claim or Interest of such party, (iii) state with particularity the basis and nature of any objection or proposed modification to the Plan, and (iv) be filed, together with proof of service, with the Court and served so as to be actually received by: (a) counsel for the Debtor, Binder & Malter, LLP, 2775 Park Avenue, Santa Clara, California 95050, Attn: Robert G. Harris; (b) counsel for the Creditors’ Committee, Stutman, Treister & Glatt, 1901 Avenue of the Stars, 12th Floor, Los Angeles, California 90067, Attn: Eric D. Goldberg; (c) counsel for Victory Park Capital Advisors, LLC and Victory Park Management, LLC, Paul Hastings LLP, 191 N. Wacker Drive, Chicago, Illinois 60606, Attn: Marc J. Carmel; and (d) the U.S. Trustee, 280 South First Street, Room 268, San Jose, California 95113, Attn: Edwina E. Dowell and John S. Wesolowski, so as to be actually received no later than **4:00 p.m. (prevailing Pacific Time), on May 5, 2014.**

**PLEASE BE ADVISED THAT ARTICLE VIII OF THE PLAN CONTAINS CERTAIN RELEASE, EXCULPATION, AND INJUNCTION PROVISIONS. YOU ARE ADVISED AND ENCOURAGED TO CAREFULLY REVIEW AND CONSIDER THE PLAN, INCLUDING THE RELEASE, EXCULPATION, AND INJUNCTION PROVISIONS, AS YOUR RIGHTS ARE AFFECTED.**

**PLEASE TAKE FURTHER NOTICE THAT** the Plan provides that holders of Allowed 503(b)(9) Claims consent to provide and do provide a discharge and release in accordance with the Third Party Release provision if such holder does not timely return this Opt-Out Form indicating its desire to reject the Third Party Release.

**PLEASE TAKE FURTHER NOTICE THAT** any holder of an Allowed 503(b)(9) Claim that does not want to consent or be deemed to consent to the Third Party Release must timely return this Opt-Out Form indicating its desire to reject the Third Party Release.

**PLEASE TAKE FURTHER NOTICE THAT** the Third Party Release is a discharge and release of the claims, interests, obligations, debts, rights, suits, damages, remedies, causes of action, and liabilities whatsoever described in the Third Party Release against (a) the

Reorganized Debtor, its estate, its property, and the Debtor's and the Reorganized Debtor's current and former Affiliates (as defined in section 101(2) of the Bankruptcy Code), subsidiaries, officers, directors, principals, partners, members, managers, employees, agents, financial and other advisors, attorneys, accountants, investment bankers, consultants, representatives, and other Professionals (as defined in the Plan); (b) the Existing Shareholders (as defined in the Plan); (c) the DIP Facility Lenders and the DIP Facility Administrative Agent (as defined in the Plan); (d) the Exit Facility Lenders and the Exit Facility Administrative Agent (as defined in the Plan); (e) Cha Cha Enterprises, LLC; and (f) with respect to each of the foregoing Entities in clauses (b) through (e), their respective current and former parents, Affiliates, subsidiaries, officers, directors, principals, employees, members, managers, agents, partners, professionals, financial and other advisors, attorneys, accountants, investment bankers, consultants, representatives, and other professionals, in their capacities as such.

**UNLESS YOU REJECT THE THIRD PARTY RELEASE PROVISION BELOW AND RETURN THIS OPT-OUT FORM BY MAY 5, 2014, YOU WILL BE DEEMED TO CONSENT TO SUCH THIRD PARTY RELEASE.**

The holder of the 503(b)(9) Claim elects to:

☐ Reject the Third Party Release provisions in Article VIII.E of the Plan

**Acknowledgments.** By signing this Opt-Out Form, the undersigned acknowledges receipt of the Disclosure Statement and the other applicable confirmation materials and certifies that the undersigned is the claimant or has the power and authority to opt-out of the Third Party Release on behalf of the claimant.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Social Security or Federal Tax I.D. No.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
If by Authorized Agent, Name and Title

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City, State, ZIP Code

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Date Completed

## **INSTRUCTIONS FOR COMPLETING THE OPT-OUT FORM**

1. This opt-out form is submitted to you to determine if you reject the Third Party Release. **You should read the Plan and Disclosure Statement carefully before completing the Opt-Out Form.**
2. The Confirmation Hearing Notice you received with this Opt-Out Form includes the Third Party Release contained in Article VIII.E of the Plan.
3. Review the certifications and acknowledgements herein.
4. Sign the Opt-Out Form. If you are completing this Opt-Out Form on behalf of another Entity, indicate your relationship with such Entity and the capacity in which you are signing and submit satisfactory evidence of your authority to do so (*i.e.*, a power of attorney).
5. Return the signed Opt-Out Form by (i) first-class mail, overnight courier, or hand delivery, in the return envelope provided with the Opt-Out Form, (ii) facsimile, or (iii) electronic mail, to:

Rust Consulting Omni Bankruptcy  
Attn: Mi Pueblo Ballot Processing  
5955 Desoto Avenue, Suite 100  
Woodland Hills, California 91367  
Telephone: (818) 906-8300  
Facsimile: (818) 783-2737  
Email: MiPuebloballoting@omnimgt.com

6. If you have received a damaged Opt-Out Form or have lost your Opt-Out Form, or if you have any questions concerning this Opt-Out Form, please contact the Voting Agent, Rust Consulting Omni Bankruptcy, at (818) 906-8300.